APPENDIX A

THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 2001-C-0189

WINDSOR HOUSING FOUNDATION,

v.

ELMER B. LITCHFIELD, IN HIS OFFICIAL CAPACITY AS SHERIFF AND *EX-OFFICIO* TAX COLLECTOR FOR THE PARISH OF EAST BATON ROUGE, FRANK GRANGER, III, IN HIS OFFICIAL CAPACITY AS ASSESSOR FOR THE PARISH OF EAST BATON ROUGE, AND THE PARISH OF EAST BATON ROUGE.

IN RE: Windsor Housing Foundation, applying for Reconsideration of this Court's Order dated March 30, 2001; Parish of East Baton Rouge, 19th Judicial District Court, Div. J, No. 459,980; to the Court of Appeal First Circuit, No. 99 CA 2626.

May 11, 2001

Reconsideration denied.

PCC

CDK

BJJ

JPV

CDT

JTK

Supreme Court of Louisiana
May 11, 2001

/s/
Deputy Clerk of Court
For the Court

APPENDIX B

THE SUPREME COURT
OF THE STATE OF LOUISIANA

No. 2001-C-0189

WINDSOR HOUSING FOUNDATION,

v.

ELMER B. LITCHFIELD, IN HIS OFFICIAL CAPACITY AS SHERIFF AND *EX-OFFICIO* TAX COLLECTOR FOR THE PARISH OF EAST BATON ROUGE, FRANK GRANGER, III, IN HIS OFFICIAL CAPACITY AS ASSESSOR FOR THE PARISH OF EAST BATON ROUGE, AND THE PARISH OF EAST BATON ROUGE.

IN RE: Windsor Housing Foundation;—Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial District Court Div. J, Nos. 459,980; to the Court of Appeal, First Circuit, No 99 CA 2626.

March 30, 2001

Denied.

CDK

BJJ

CDT

JTK

CALOGERO, C.J., would grant the writ.
LEMMON, J., would grant the writ.
VICTORY, J., would grant the writ.

Supreme Court of Louisiana
March 30, 2001

/s/
Deputy Clerk of Court
For the Court

APPENDIX C

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

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99 CA 2626

WINDSOR HOUSING FOUNDATION,

v.

ELMER B. LITCHFIELD, IN HIS OFFICIAL CAPACITY AS SHERIFF AND *EX-OFFICIO* TAX COLLECTOR FOR THE PARISH OF EAST BATON ROUGE, FRANK GRANGER, III, IN HIS OFFICIAL CAPACITY AS ASSESSOR FOR THE PARISH OF EAST BATON ROUGE, AND THE PARISH OF EAST BATON ROUGE.

On Appeal from the Nineteenth
Judicial District Court (Number 459,980),
Parish of East Baton Rouge, State of Louisiana

JUDGMENT RENDERED:
December 22, 2000

BEFORE: Gonzales, Pettigrew And Edwards,[1] JJ. Gonzales, J.

In this case, a taxpayer challenges a trial court judgment, dismissing its suit for recovery of taxes paid under protest, based on an exception of prescription filed by the tax collector.

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[1] The Honorable Jules D. Edwards, III, Judge, Fifteenth Judicial District Court, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

FACTUAL AND PROCEDURAL BACKGROUND

According to the allegations of its petition,[2] Windsor Housing Foundation (Windsor) is a foreign non-profit corporation authorized to do and doing business in Louisiana and is exempt from taxation under §501(c)(3) of the Internal Revenue Code. Windsor owns property in East Baton Rouge Parish, which it operates as a "qualified residential rental project" supplying housing to low and/or moderate income families.

For tax year 1998, the East Baton Rouge Parish tax assessor assessed Windsor with ad valorem taxes in the amount of $44,505.00. On approximately March 29, 1999, Windsor paid $45,840.15[3] under protest to the East Baton Rouge Parish Sheriff and notified the sheriff of its intent to file suit to recover the payment plus interest. Windsor's protest was based on the position that its property was also exempt from state ad valorem taxation pursuant to La. Const. art. 7, § 21(B)(1)(a).

On April 26, 1999, Windsor filed a "Petition to Recover Ad Valorem Taxes Paid Under Protest," naming, as defendants, Elmer B. Litchfield, in his official capacity as Sheriff and Officio Tax Collector for the Parish of East Baton Rouge; Frank Granger, III, in his official capacity as Assessor

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[2] This case came before the trial court on an exception titled "prescription/peremption and no cause of action." The minute entry from the August 16, 1999 hearing indicates the trial court "found that the matte[r] has prescribed and maintained the Exception of No Cause of Action." In ruling upon an exception of no cause of action, well-pleaded allegations of fact must be accepted as true, and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *Kewaunee Scientific Corporation v. Charles Ragusa & Son, Inc.*, 97-1823 (La. App. 1 Cir. 9/25/98), 723 So.2d 470, 474.

[3] According to Windsor, the amount of $45,840.15 represents the amount of the assessment and interest through March of 1999.

for the Parish of East Baton Rouge; and the Parish of East Baton Rouge.[4] On May 10, 1999, Sheriff Litchfield filed a "Peremptory Exception of Prescription/Peremption and No Cause of Action," claiming Windsor failed to timely pay the protested taxes before December 31, 1998, and its right to protest had therefore prescribed or perempted. After a hearing on August 16, 1999, the trial court signed a judgment dated August 26, 1999, granting Sheriff Litchfield's exception and dismissing Windsor's claim with prejudice.

Windsor appeals from the trial court judgment, urging the following assignments of error:

1. The trial court erred in maintaining the defendant Collector's exceptions of prescription/peremption and no cause of action because the statute under which Windsor's cause of action arises, La. R.S. 47:2110, does *not* require that the subject taxes be paid before December 31 of the given year.

2. The trial court erred in denying Windsor its post-deprivation remedy under La. R.S. 47:2110, constituting a denial of Windsor's due process rights under the Fourteenth Amendment to the United States Constitution.

DISCUSSION

In its first assignment of error, Windsor contends the trial court erred in dismissing its claim, because La. R.S. 47:2110,[5]

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[4] The record does not indicate the status of Windsor's suit against Frank Granger, III, and the Parish of East Baton Rouge. The claims against these defendants are not at issue in this appeal.

[5] Louisiana Revised Statute 47:2110(A) provides, in pertinent part:

> Any person resisting the payment of any amount of tax found due, or the enforcement of any provision of the tax laws in relation thereto, shall pay the amount found due to the officer designated by law for the collection of such tax and shall give him and the officer

the statute that gives Windsor the right to protest a tax assessment, does not require that the protested taxes be paid before December 31 of the tax year for which the taxes are due. On the other hand, Sheriff Litchfield contends La. R.S. 47:2110 must be read *in pari materia* with La. R.S. 47:2101(A)(1),[6] which requires that all taxes due for a given year be paid on or before the thirty-first day of December in order to avoid the notice, advertisement, and sale of the property.

In *Capital Drilling Company v. Graves*, 496 So.2d 487, 491-491 (La. App. 1 Cir. 1986), this court read La. R.S. 47:2110 and 47:2101(A) *in pari materia* and concluded that payment under protest must be made in the calendar year in which the assessment is made, in order to preserve the right to protest the tax. The *Capital Drilling Company* case was subsequently followed by this court in *Comm-Care Corporation v. Louisiana Tax Commission*, 96-0039 (La. App. 1 Cir. 9/27/96), 681 So.2d 1001. However, the Third

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or agency that has given rise to the cause of action notice at the time of payment of his intention to file suit for the recovery of such tax. Upon receipt of such notice, the amount so paid shall be segregated and held by the officer for a period of thirty days. If suit is filed within such time for the recovery of the tax, then that portion of the taxes paid that are in dispute shall be deemed as paid under protest and such amount shall be segregated and shall be further held pending the outcome of the suit.

[6] Louisiana Revised Statute 47:2101(A)(1) provides, in pertinent part:

All taxes shall be collected in the calendar year in which the assessment thereof is made, and they shall be designated as the "taxes for the year ____", accordingly as they are collectible, and the taxes assessed in each year shall be due in that calendar year as soon as the tax roll is filed in the office of the recorder of mortgages, ... and they shall be paid on or before the thirty-first day of December in each respective year in order to avoid the notice, advertisement, and sale required by Article VII, Section 25 of the Louisiana Constitution.

Circuit Court of Appeal had previously reached a contrary result in *Comm-Care Corporation v. Bishop*, 95-1246 (La. App. 3 Cir. 3/6/96), 673 So.2d 212. In *Comm-Care Corporation v. Bishop*, 96-1711 (La. 7/1/97), 696 So.2d 969, the Louisiana Supreme Court affirmed the reasoning of this court and reversed the third circuit's opinion. However, on rehearing, the Louisiana Supreme Court "set aside the reasoning and holding" of its original opinion, and decided the case on an issue other than the December 31 payment deadline issue. *Comm-Care Corporation v. Bishop*, 96-1711 (La. 1/21/98) 706 So.2d 425, 426 (on rehearing). Therefore, the validity of this court's holding in *Comm-Care Corporation v. Louisiana Tax Commission*, and the third circuit's holding in *Comm-Care Corporation v. Bishop*, is uncertain. In any event, we remain bound by the *Capital Drilling Company* case, because the "law of the circuit" rule requires that we follow prior decisions of our own circuit. *Graves v. Businelle Towing Corporation*, 95-1999 (La. App. 1 Cir. 4/30/96), 673 So.2d 311, 315. Therefore, based on the reasoning of *Capital Drilling Company*, we conclude the trial court correctly granted the exception, dismissing Windsor's suit against Sheriff Litchfield.

In assignment of error number two, Windsor contends the trial court erred in denying Windsor its post-deprivation remedy under La. R.S. 47:2110, and that such constitutes a denial of Windsor's due process rights under the Fourteenth Amendment to the United States Constitution. In *Comm-Care Corporation v. Bishop*, 96-1711 (La. 7/1/97), 696 So.2d 969, 975, the Louisiana Supreme Court rejected this argument, concluding the procedure provided by La. R.S. 47:2101(A) and 47:2110 presented no due process violations. The court explained:

> Next, we address Comm-Care's argument that their Due Process rights were violated when they were denied relief as per La. R.S. 47:2110. Our decision rendered in

Church Point Wholesale Beverage v. Tarver, 614 So.2d 697 (La. 1993) adequately resolves this argument. Relying on the decision rendered in *McKesson v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990), we found that a state has two options to comply with Due Process. First, a state can provide the avenue of pre-deprivation by allowing the taxpayers the ability to meaningfully challenge the tax before paying it. Secondly, a state can [choose] the option of post-deprivation by affording its taxpayers an opportunity to challenge the validity of the tax and a certain remedy with the following procedural requirements: (1) only taxpayers paying "under protest" would be entitled to relief; and, (2) the actions could be subject to short statute of limitations. . . . (Footnote omitted.)

In no uncertain terms, [La. R.S. 47:2110] provides that a person resisting payment of an amount of ad valorem tax found due shall pay the amount to the proper officer, at which time he shall give to that officer notice of his intention to file suit to recover the tax. Upon receipt of the taxpayer's notice of suit, the officer will segregate the amount and hold it for thirty days. If suit is filed, then that portion of the tax which is being disputed shall be segregated and held pending the outcome of the litigation. In addition to the amount of tax in dispute, the statute further provides the taxpayer interest should he prevail. After reviewing La. R.S. 47:2110, we find that there were no Due Process violations. The only reason Comm-Care was refused a refund was because the corporation voluntarily chose to pay its taxes under protest beyond the time prescribed by R.S. 47:2101(A)(1).

Although this reasoning was subsequently set aside by the supreme court on rehearing, *Comm-Care Corporation v.*

Bishop, 706 So.2d at 426, we find it remains persuasive and adopt it as our own. Windsor's argument that its due process rights have been violated is without merit.

DECREE

For the foregoing reasons, the judgment of the trial court, dismissing Windsor's petition against Sheriff Litchfield with prejudice, is AFFIRMED. Costs of this appeal are assessed to Windsor.

APPENDIX D

[Filed: August 23, 1999]

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

WINDSOR HOUSING FOUNDATION,

v.

ELMER B LITCHFIELD, *et al.*

JUDGMENT

This matter came for hearing on the Sheriff's Peremptory Exception of Prescription/Peremption and No Cause of Action on August 16, 1999. Present were: Leu-Anne Lester Greco, counsel for Sheriff Litchfield; Michael H. Pinkerton, counsel for plaintiff.

Considering the pleadings, the law, and arguments of counsel:

IT IS ORDERED that the Exception be maintained, and plaintiffs' claims be dismissed with prejudice at its cost.

Judgment rendered in open court on August 16, 1999.

Judgment signed in Baton Rouge, Louisiana on this [26th] day of August, 1999.

/s/ Curtis A. Calloway
CURTIS A. CALLOWAY, JUDGE
19th Judicial District Court

APPENDIX E

STATUTORY PROVISIONS INVOLVED

Constitution of the United States

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Louisiana of 1974

Article VII.

Section 21. In addition to the homestead exemption provided for in Section 20 of this Article, the following property and no other shall be exempt from ad valorem taxation:

* * * *

(B)(1)(a) Property owned by a nonprofit corporation or association organized and operated exclusively for religious, dedicated places of burial, charitable, health, welfare, fraternal, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or

member thereof and which is declared to be exempt from federal or state income tax;

Louisiana Revised Statutes

Title 47, Section 2101 (A)(1)

All taxes shall be collected in the calendar year in which the assessment thereof is made, and they shall be designated as the "taxes for the year ___", accordingly as they are collectible, and the taxes assessed in each year shall be due in that calendar year as soon as the tax roll is filed in the office of the recorder of mortgages, except taxes on movable property in the event of a bulk sale under the provisions of the Bulk Sales Law, and they shall be paid on or before the thirty-first day of December in each respective year in order to avoid the notice, advertisement, and sale required by Article VII, Section 25 of the Louisiana Constitution. In the event of a bulk sale of movable property under the provisions of the Bulk Sales Law, all taxes due on movable property shall be due ten days prior to completion of the transfer or the payment of any consideration therefor and shall be payable upon completion of the bulk sale. (Footnote omitted).

Title 47, Section 2110 (A)(2)

Any person resisting the payment of any amount of tax due shall pay the amount due to the officer designated by law for the collection of such tax and shall give him, the parish or district assessor, and the Louisiana Tax Commission written notice at the time of payment of his intention to file suit for the recovery of such tax. Upon receipt of such notice, the amount so paid shall be segregated and held by the officer for a period of thirty days. If a suit is timely filed contesting the correctness of the assessment pursuant to R.S. 47:1856, 1857, or 1998 and seeking the recovery of the tax, then that portion of the taxes paid that are in dispute shall be deemed as paid under protest and such amount shall be segregated and shall

be further held pending the outcome of the suit. That portion of the taxes paid by the taxpayer to the officer which is neither in dispute nor the subject of a suit contesting the correctness pursuant to R.S. 47:1856, 1857, or 1998 shall not be made subject to the protest.